

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Case No. 2:20-cv-02600-SHL-cgc

Judge Sheryl H. Lipman
Magistrate Judge Charmiane G. Claxton

JURY TRIAL DEMANDED

PLAINTIFFS' NOTICE REGARDING ADR STIPULATION

According to the Court's Scheduling Order in this case (Dkt. No. 61) and the Court's Local Rules regarding Alternative Dispute Resolution, the parties are to file a stipulation by October 23, 2020, designating the specific ADR intervention the parties plan to use, the time frame for ADR completion, and the name of the neutral. The parties had been working towards filing such a document, and Plaintiffs and had explicitly agreed to Defendants' draft Stipulation, which called for a mediation on or before December 23, 2020 with Ret. Judge Layn Phillips, per the Parties' agreement. Within minutes, Defendants filed an entirely different notice with this Court stating that "the parties are unable to submit the ADR stipulation mandated by the Court's Scheduling Order." (Dkt. No. 67 at p. 2.)

In the course of negotiating the stipulation, Plaintiffs alternatively proposed mediating in April, with an initial mediation session in December 2020 and a follow-up mediation in April of 2021. Plaintiffs reasoned that this would give Plaintiffs a meaningful opportunity to receive and analyze documents, and in particular transactional sales data, which could help guide the mediation

discussion and make it more meaningful. Defendants responded by insisting that a full mediation be *completed* by December 23, 2020. In order to resolve the dispute, and despite some misgivings about the likelihood of the mediation being completed by then, Plaintiffs accepted Defendants' proposal and asked Defendants not to file their own separate statement. In no uncertain terms, counsel for Plaintiffs stated "please do not [file a separate written statement]. That would not be in good faith. Just put in that we stipulate [to Defendant's draft stipulation]." Plaintiffs further told Defendants that Plaintiffs would "do our best, and in good faith, to mediate in December. . . . If you are serious, we will be serious."

In short, after a negotiation, Plaintiffs agreed to the stipulation Defendants had originally proposed. In lieu of filing the stipulation to which the Plaintiffs had agreed to in writing by email, and despite Plaintiffs' request to file the agreed stipulation, Defendants filed a statement stating that the parties did not agree. To be clear, the Plaintiffs are able and willing to have a full day mediation session with Hon. Layn Phillips on or before December 23, 2020, depending upon his availability, and are willing to have the Court enter the stipulation as originally drafted by the Defendants. A copy of that stipulation is attached hereto as **Exhibit A**.

Dated: October 23, 2020

Respectfully submitted,

s/ J. Gerard Stranch, IV

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** Pro hac vice application pending

*** Pro hac vice application forthcoming

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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was filed with the Court's Case Management/Electronic Case Filing System, this 23rd day of October, 2020, and served upon the following counsel:

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